be made in terms of the summons; in Originating Summons No. 50/32, the answer to both the matters raised is in the negative. The Official Administrator will pay the costs of both these proceedings out of the estate.

Order accordingly.

(Appellate Criminal Jurisdiction)

(Original Criminal Jurisdiction)

Between

TAN BAW ..... **Accused. Appellant.**

and

THE PUBLIC PROSECUTOR OF JOHORE ..... **Complainant Respondent.**

(Batu Pahat Criminal Case No. 1649 of 1932)

(Batu Pahat Criminal Appeal No. 12 of 1932)

Johore Land Enactment, Sections 11, 18, 132, & 135—Rules under Land Enactment 1910, Section 21 (ii)—Omission by landowner to obtain license from the Collector—Removal of gravel stone by appellant-accused from land with the permission of landowner—Payment by appellant-accused to landowner for gravel stone removed—whether appellant-accused thus chargable under Sections 11, 18, 132 & 135.

In a case where a landowner has omitted to obtain a license from the Collector of Land Revenue under Sections 11, 18, *et seq.* of the Johore Land Enactment 1910 and the rules made thereunder, for the removal from his land of materials or commodities, there can be no conviction under Section 132 or 135 of the same Enactment of a person who has obtained even the verbal permission of the landowner for the removal of any material or commodity for which the accused has paid the landowner.

Such a license is primarily issuable to the landowner or to another with the consent of the landowner.

The Appellant was charged in the Magistrate's Court at Batu Pahat under Sections 11 and 135 of the Johore Land Enactment 1910 on November the 27th 1932. The charge against him was one of removing gravel stone from land comprised in Johore Grant No. 9946 belonging to one Lim Cheng Poon of Tanjong Laboh, without a license. The Appellant pleaded not guilty and was fined $100.00 or in default thereof was sentenced to undergo two months' rigorous imprisonment.

The following facts were admitted: the appellant is a stone mason residing at Batu Pahat. He admitted removing the gravel stone and that the land from which it was taken did not belong to him. He said he had the permission of Lim Keok, the father of the owner of the land to remove therefrom the gravel stone and that he had paid him 50 cents per cart load therefor. The permission given by Lim Keok was verbal and the appellant proceeded to remove the gravel stone on the assumption that Lim Keok had the power to grant him this permission. Lim Keok was not called, as he was at the time unavailable.

The following provisions of the Johore Land Enactment 1910 and/or the rules made thereunder are material.

Section 11 of the Land Enactment 1910.

(i) Every title to land under this Enactment shall be deemed to vest in the person entitled thereunder a surface right only in the land to which title relates, and, in the absence of an express condition to the contrary in such title, shall convey no right to remove, without licence, beyond the boundaries of the said land any timber or other jungle produce, gravel, stone, coral, shell, guano, sand, loam or clay obtained from the said land, or any bricks, lime or other commodities manufactured from the materials aforesaid.

Section 18.

The Sultan in Council may, from time to time, make rules for fully and effectually carrying out and giving effect to the various purposes, provisions and powers in this Enactment contained and such rules, when published in the Gazette, shall have the force of law.

(xii) Issuing licenses to dig and remove gravel, stone, coral shell, guano, sand, loam or clay, or to remove bricks, lime or other commodities manufactured from the materials aforesaid provided that, in the case of land which now is or hereafter may be alienated, no such licence shall be issued except to the owner of such land or with his consent.

Section 132.

If any person, not licensed or otherwise authorised in that behalf under Section 18, shall cut, dig or take from any State land any product in such section mentioned, or remove or sell the same, every such person shall, on conviction before a Magistrate, be liable to a fine not exceeding $500-00, or, in default of payment thereof, to imprisonment of either description for a term not exceeding six months and, if the offence be in respect of any land reserved under section 9, to a fine not exceeding $1,000 or, in default of payment thereof to imprisonment of either description for a term not exceeding twelve months.

Section 135.

Any person offending against the provision of any section of this Enactment for which no penalty is otherwise by this Enactment provided shall be liable, on conviction before a Magistrate, to a fine not exceeding $100, or, in default of the payment thereof, to imprisonment of either description for a term not exceeding four months.

Rules under Land Enactment 1910.

21(ii) In like manner and subject to like conditions the Collector may issue to any person a license to dig and remove or to remove as the case may, from any alienated land any of the said articles which the owner of such land may by the conditions of the title under which the land is held, be prohibited from removing, provided that no such license shall be issued except to the owner of the land or with his consent.

Osborne-Jones for Appellant.

Section 11 of the Land Enactment 1910 provides for surface rights only to a little holder. To acquire mineral rights in the land a license must be obtained from the Collector and under the same section the license can only be granted to a title holder. Likewise under section 18 (xii) of the Land Enactment the same

proviso holds good in the case of land alienated, the land owner may be given the license. But the wording of the section 18 (xii) is "To the owner of such land or with his consent". The latter portion of the expression—" or with his consent" when read with the other sections is, it is submitted, meaningless. It is not in dispute that the appellant removed the materials with the permission of the owner and that he has paid for the materials. The words—" or with his consent" cannot be construed to mean, say,—" to another with the consent of the landlord." The only possible license holder under the sections referred to is the title holder. The appellant is therefore wrongly charged and convicted. There is no penal provision in the Land Enactment for an offence of this particular nature.

The Hon'ble S. W. Jones, Legal Adviser, opposed.

Burton, J. There was no dispute as to the facts of this case. The appellant had removed stone from land alienated to Lim Keok without being licensed in that behalf and was convicted under Section 135 of the Land Enactment. Section 11 of the Land Enactment declares that a title to land conveys only surface rights and in the absence of an express condition to the contrary conveys no right to remove stone without licence.

Section 18 (xii) provides that the Sultan in Council may make rules for the issuing of such licences subject to the proviso "that in the case of alienated land, no such licence shall be issued except to the owner of such land or with his consent". Rule 21 (ii) was made in pursuance of this power and it repeats this proviso. I take this proviso to mean that a licence may be issued either to the owner or to another person with his consent. and I think therefore that in the present case the appellant should have been licenced with the consent of Lim Keok to remove the stone and should have paid royalty accordingly. But I do not think the legislature has provided for the punishment of the omission. Section 132 clearly provides for the failure to take out a licence to remove stone from State Land; and I should have expected a similar provision in respect of alienated land. The prosecution say that the general penalty in section 135 covers a breach of the provisions of section 11. But this implies an offence against the provisions of section 11, and I cannot see that the appellant has offended against the provisions of section 11. The object of section 11 is to limit the rights of the holder of a title; it is declaratory not prohibitive, and I think that it involves an undue stretching of the wording of section 11 to say that it prohibits another person than the owner from taking stone from alienated land without a licence; and it is a still greater stretch of meaning to say that the appellant has committed a breach of this section which is punishable by section 135. An enactment must be construed strictly in favour of an accused person and it is wrong to stretch the interpretation of a law in order to make a breach punishable where the law does not clearly and unequivocally provide for the punishment of the breach. I think therefore that the appeal should be allowed, and the conviction and sentence set aside. I should like to point out to the Magistrate the irregularity in the trial of this case. The accused can either plead guilty unreservedly or claim trial. He cannot admit some facts and reserve his right to a trial on a point of law. If he wishes a trial on a point of law, that amounts to a claim of trial and the facts of the prosecution have then to be formally proved. In this case the accused seems himself to have volunteered evidence and given all the necessary facts.

Appeal allowed.

Solicitor for the appellant— *D. G. Osborne-Jones.*

Respondent— *The Public Prosecutor of Johore.*